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ORIGINAL

SUPERIOR COURT
OF THE
DISTRICT OF COLUMBIA

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UNITED STATES OF AMERICA	:	Case No.: 2011CF1020242
	:	
v.	:	Judge Lynn Leibovitz
	:	
DEREK JOHNSON	:	Sentencing Date: January 20, 2012

UNITED STATES' MEMORANDUM IN AID OF SENTENCING

The United States of America, by and through its counsel, the United States Attorney for the District of Columbia, hereby submits the following memorandum in aid of sentencing.

FACTUAL BACKGROUND

The defendant pled guilty to second degree murder while armed (knife) on November 18, 2011, pursuant to a plea agreement requiring the approval of the Court subject to Rule 11(e)(1)(c) of the Superior Court Rules of Criminal Procedure.

The defendant and Jamar Freeman were friends who at one time attended the same school and who shared many of the same acquaintances. Freeman,17, had apparently failed to comply with court-imposed DYRS restrictions and was at least at one point in September or October 2011 living at Derek Johnson's house. As indicated by the proffer, Johnson believed that Freeman had broken into the house and stolen personal items from him.

On October 8, 2011, Johnson was apparently still angry with Freeman. He went to Raymond Recreation Center while armed with a knife, and encountered Freeman. Freeman did not have a weapon and Johnson had no reason to be afraid of him. He punched Freeman in the face or neck area and the two began fighting by throwing punches and wrestling. During a lull, Johnson removed from his clothing the knife and Freeman began to flee. The government proffers that at least one witness would state that Johnson stabbed Freeman twice. Freeman suffered a stab wound to the

chest of 4-5 inches in depth, severely damaging the heart, and the autopsy also revealed a 3 inch would on the front of the left forearm between the elbow and wrist, 3/4 of an inch to an inch deep.

Freeman then ran away down an alley where he collapsed from his fatal chest wound. The defendant fled the area. On October 13, 2011, a warrant was issued for the defendant's arrest. The defendant did not turn himself in until October 18, 2011, ten days after the murder. In a voluntary interview with detectives, he continued to deny killing Freeman. After the preliminary hearing, which was held on October 24, 2011, because at presentment the presiding judge granted only a 22 D.C. Code Section 1322(b)(1)(a) hold, Judge Richter granted a 1325(a) hold, concluding there was a substantial probability that the defendant committed the murder. The parties then began plea negotiations.

Although the defendant, due possibly to his age, has limited involvement in the criminal justice system, the defendant had recently been expelled from Cardozo High School. Although the Presentence Report states that the defendant "reported he was in possession of the knife on school grounds because he forgot it was in his pocket," the government would proffer this expulsion, which occurred just a few weeks before the murder, involved him throwing a knife or pieces of a knife at a 14 year old fellow student who was also the mother of his infant son.

ANALYSIS

A judge should consider four factors when imposing a sentence: (1) the protection of society against wrongdoers; (2) the punishment – or much better – the discipline of the wrongdoer; (3) the reformation of the wrongdoer; and (3) the deterrence of others from the commission of like offenses. *Spanziano v. Florida*, 468 U.S. 447, 477-78 (1984) (Stevens, J., concurring); *Williams v. New York*, 337 U.S. 241, 251 (1949). However, the principal objective of sentencing is the protection of

society. *Cf. Kelly v. Robinson*, 479 U.S. 36 (1986) (criminal justice system operated for benefit of society as whole); *Jones v. United States*, 463 U.S. 354 (1983) (incarceration chosen to reflect society's view of proper response to commission of particular offense). The Court also may weigh the details of the crime for which defendant is being punished, *Williams v. Oklahoma*, 358 U.S. 576 (1959), and the deterrent effect of the sentence on others. *See, e.g., United States v. Barbara*, 683 F.2d 164 (6th Cir. 1982).

The sentencing judge may consider a wide variety of information as to a defendant's background, character, and conduct, criminal or otherwise, in determining the proper punishment for a defendant. Guideline 6.3; *Roberts v. United States*, 445 U.S. 552 (1980); *Powers v. United States*, 558 A.2d 1166 (D.C. 1991) (sentencing judge may examine any reliable evidence, including evidence not introduced at trial and uncharged crimes; trial court should obtain "fullest information possible" concerning defendant's life and characteristics). The trial judge has wide discretion in sentencing and "may appropriately conduct an inquiry broad in scope, largely unlimited either as to the kind of information he may consider, or the source from which it may come." *United States v. Tucker*, 404 U.S. 443 (1972). *See also Collins v. United States*, 631 A.2d 48 (D.C. 1993) (sentencing court "has broad discretion to review relevant matter, verified or not, within constitutional limits."). The sole limitation is that the data the Court considers have sufficient indicia of reliability. *Harris v. United States*, 612 A.2d 198, 208 (D.C. 1992).

Finally, "[a]n important function of the corrections system is the deterrence of crime. The premise is that by confining offenders in a facility where they are isolated from the rest of society, a condition that most people presumably find undesirable, *they and others* will be deterred from committing additional crimes." *Pell v. Procunier*, 417 U.S. 817, 822 (1974) (emphasis added).

There is no explanation for why the defendant thought it appropriate to go from what was essentially a school ground fight to stabbing a defenseless victim twice. The victim was unarmed; the victim did not start the fight; the victim was not getting the better of the defendant; and the victim was not ganging up with anyone to attack the defendant. Indeed, the victim withdrew from the fight once he saw that the defendant had a knife. Yet the defendant, according to the evidence, either chased down and stabbed the victim in the heart, making a 4-5 inch deep wound, and then tried to stab him again, or, after successfully slashing him in the arm, the defendant felt that superficial wound was insufficient for whatever wrong he perceived Freeman had done to him and stabbed him again, striking the victim in the heart. Either scenario shows the defendant's intent to cause serious harm.

Nor did the defendant show remorse when he met with detectives ten days later. While the government appreciates and recognizes his early acceptance of responsibility shortly after the preliminary hearing in this case, atypical for many individuals charged with murder, his substantial delay in turning himself in and attempting to "spin" the detectives when he did add up to an initial failure to accept responsibility for his criminal actions.

The Court should accept the plea agreement because it reflects the defendant's subsequent acceptance for his actions and requires a range of 12 to 15 years of incarceration that will protect society from the defendant, who took the life of an individual beloved by his family and friends. The range is reasonable under all the circumstances. But the government believes that the higher end of that range is more appropriate, given the unprovoked nature of the attack and the facts as described above.

Respectfully submitted,

Ronald C. Machen Jr.
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I hereby certify that on January 12, 2012, I caused a copy of the foregoing to be served on counsel for defendant, Premal Dharia, by email.

ASSISTANT U.S. ATTORNEY